

APPEAL NO. 040951
FILED JUNE 25, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 1, 2004, with the record closing on April 16, 2004. The hearing officer determined that the respondent/cross-appellant (claimant herein) sustained a compensable injury on _____, and that the appellant/cross-respondent (carrier herein) waived the right to dispute the compensability of this injury by not timely contesting this injury in accordance with Section 409.021. Neither party appeals these determinations and they have become final pursuant to Section 410.169. The hearing officer also determined that the claimant did not sustain a compensable injury on (alleged date of injury), and that the claimant did not have disability from a (alleged date of injury), injury. The carrier appeals the hearing officer's decision, arguing that the decision needs to be reformed due to typographical errors. There is no response from the claimant to the carrier's appeal. The claimant appeals, arguing that the hearing officer's decision regarding the (alleged date of injury), injury is contrary to the evidence. The carrier responds that the hearing officer's decision regarding the (alleged date of injury), claim of injury should be affirmed.

DECISION

We reform the decision of the hearing officer by correcting typographical errors. Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer as reformed.

The carrier points out that Conclusions of Law Nos. 5 and 6 contain typographical errors. We reform these Conclusions of Law to read _____ where they read (incorrect date of injury) to correct these typographical errors.

As far as the claimant's appeal is concerned, there was conflicting evidence presented on the disputed issues of injury and disability. The issues of injury and disability are questions of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment

for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to reverse the hearing officer's finding of no injury or disability regarding the alleged (alleged date of injury), injury.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge